

Name: MR. GARY HALL

Number: 1133749

Place of Confinement: Red Onion State Prison,
Post Office Box 1900, Pound, Virginia 24279-1900

AT ROANOKE, VA

FILED

12/28/2018

JULIA C. DUDLEY, CLERK

BY: s/ S. SAKALAS

DEPUTY CLERK

Dated: December 19th 2018

MR. GARY HALL #1133749

Plaintiff

v.

E. RENICK, Correctional Officer of R.O.S.P., et alii;
Defendant(s)

Civil action no. 7:17-cv-00385

IN RE: MOTION FOR HOLDING OF SPOILATION SANCTIONS BY DEFENDANTS
FOR ASSOCIATED RELIEF

Now Comes Mr. Gary Hall #1133749, pro se, Plaintiff moves this Honorable Court for MOTION FOR HOLDING OF SPOILATION SANCTIONS BY DEFENDANTS FOR ASSOCIATED RELIEF, because Defendants have failed to fully comply with the 10/24/18, ORDER to provide Plaintiff pages "2", and "4", of written Statement, the review of the Video footage ordered by this Court in T 6, of Pl's First Request for Production of Documents on record as ECF. no. 43, or Pl's MOTION TO COMPILE "SPECIFIC" DISCOVERY on record as ECF. no. 52, and the ALTERATION of the available ALPHA-100 pods RAPID-EYE Video footage Showed to Plaintiff on or about May 22nd 2018; also because Defendants have failed to preserve "specifically" Requested Electronically Stored information in Clear Violation of FEDERAL RULES OF CIVIL PROCEDURE, RULE 37(e), after the duty to preserve was triggered.

Therefore, Plaintiff's Motion and Sanctions should be GRANTED.

In accordance with Operational Procedure 666.1 III B #7(c), and the 9/25/14, Memorandum (see: attached # 1) also Grievance #04129 (see: attached # 2) Clearly informed Defendants to save Specific Video footage (Referenced in 2 Grievance) for future litigation purposes, triggering the duty to preserve as stated in Pl's APP. 27 & 1,248,

Plaintiffs' First Request for Production of Documents at T 6, on record as ECF. no. 43, and Plaintiff's MOTION TO COMPILE "SPECIFIC" DISCOVERY on record as ECF. no. 52, Specifically Requested the following Documents and Video footage be produced for inspection:

- ALPHA Buildings Front Recreational yards (Rapid-Eye) Camera;
- BRAVO Buildings Recreational yards (Rapid-Eye) Camera;
- BRAVO Buildings 1,2, & 3 sides Vestibule Camera;
- BRAVO Buildings Cell 308's Cell Camera;

(CONTINUED ON NEXT PAGE)

MOTION FOR HOLDING OF SPOILATION SANCTIONS BY DEFENDANTS FOR ASSOCIATED RELIEF
Continuation of page one

(CONTINUATION OF PAGE ONE)

- Any Hand held "Sony" Camera footage showing Removal from five-point restraints by W.R.G.P. and/or R.O.S.P. on 8/14/15, of G. Wall #1133749
- Pages "2" and "4", of Plaintiff's written Statement on 8/26/15.

Concerning the 8/14/15, incident on Red Onion State Prison in ALPHA-100, pod A at approx. 4:00 PM - 5:00 PM involving Offender G. Wall #1133749.

Defendants' Response to Pl.s First P.F.P.D. on record as ECF. no. at ¶ 2 & 6, (dated: May 16, 2018), and their Response to Pl.s MOTION TO CANCEL on record as ECF. no. 1, at ¶ 3(g)(8)(c) (dated: November 7th 2018) Clearly Shows defendants DID NOT Save any of the above mentioned Video footage or provide it for Plaintiff's inspection in accordance with the OCTOBER 24th 2018 Court ORDER on record as ECF. no. 60, nor did they provide pages "2" and "4" of Plaintiff's written Statement on 8/26/15, as stated in Pl.s AFF. at ¶ 6, attached.

In the motion before this Court, Plaintiff contends the ALTERATION of the available Video footage, as stated in Pl.s AFF. at ¶ 4, and the failure to preserve the above listed Video footage, is Clearly equivalent to the destruction of the automobile in Silvestri, "the law views BOTH ALTERATION of evidence and the FAILURE TO PRESERVE evidence as Spoliation." (See: Silvestri, 271 F.3d at 590) "Spoliation Refers to the destruction or Material alteration of evidence or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation")

Since the defendants alleged Plaintiff assaulted Two (2) Correctional Officers and sought Criminal Charges, Defendants SHOULD HAVE Reasonably anticipated (Criminal and Civil) litigation Regarding this incident as stated in Pl.s AFF. at ¶ 2 & 8. attached.

Plaintiff has presented sufficient evidence to support that the Spoliators' conduct was so egregious as to amount to a forfeiture of the defendants Counter-Claim(s) or Defenses and the effect of the Spoliators' Conduct was so irreparably prejudicial that it Substantially denied the plaintiff to the ability to ~~properly~~ defend against or prosecute his case adequately by being unable to clearly show the following:

- Plaintiff DID NOT cause the injury to Officer Hicks' eye by punching or swinging a punch at either Officer;

(CONTINUED ON NEXT PAGE)

MOTION FOR HOLDING OF SEQUESTRATION SANCTIONS BY DEFENDANTS FOR ASSOCIATED RELIEF

Continued from page Two

(Continued from page Two)

- Plaintiff was NOT Resistant while en Route to BRAVO-Building to WARRANT the Continued use of "Physical" force or being Strapped down in five-point Restraints;
- Plaintiff was Continuously BEAT and Rammed into poles and DOOR frames Head-first by Escalating Officers while en Route to BRAVO-Building and into BRAVO 1, 2, & 3 Vestibule

and by Concomitantly prejudicing Plaintiff's ability to present (in excess to) the "sole piece of material evidence, although the NAMED Defendants had no obligation to "personally" preserve the Video and "Sanctions are most appropriately directed at the party having control over the evidence; who had 'an obligation to preserve it at the time it was destroyed.' (See Residential Funding Corp., v. DR George Fin. Corp., 306 F.3d 99, 107 (2d Cir. 2002)). This Spoliation of the Video will the less Severely prejudices Plaintiff's ability to prove his defense or adequately prosecute the underlying Claim(s) of:

- Plaintiff initially being assaulted by Defendant E.R. BENICK;
- Plaintiff being assaulted Responding Officers T. HOGUE and J. WYATT while face-down, restrained; and
- Continuously being assaulted while fully restrained en route to BRAVO-Building and while in BRAVO-Buildings 1, 2, & 3's Vestibule by Responding Officers

II. AFFIDAVIT IN SUPPORT OF MOTIONS FOR HOLDING OF SEQUESTRATION SANCTIONS BY DEFENDANTS

I, Mr. Gary Hall #113914P, afform that I am the Plaintiff in this action and I know the content of the following statements; that they are true of my own knowledge, except to those matters that are stated in it to be based in my own information and belief; and to those matters, I also believe them to be true. I declare under penalty of perjury that the following statements are true and correct:

(CONTINUED ON NEXT PAGE)

MOTION FOR HOLDING OF SICKLETON SANCTIONS BY DEFENDANTS FOR ASSOCIATED RELIEF

(Continuation of: II. AFFIDAVIT IN SUPPORT OF MOTION, from page Three.)

(Continuation of: II. AFFIDAVIT IN SUPPORT OF MOTION, from page Three)

1. Affiant declares, the duty to preserve was triggered according to Operational procedure §606.1 II B #7(c), and the attached # 1, Memorandum dated: 9/15/14, which Clearly States: "If a Grievance is Received that references a Specific ... Video Recording, a Copy ~~will~~ of the Recording shall be made and maintained at the facility" (see: attached # 1)

2. Affiant declares, Plaintiff Submitted Grievance #00423, on or about 9/13/15, detailing Specific "Referenced Video Footage of ALPHA-Buildings Front Recreation Yard Cameras; BRAVO-Buildings Rec. yard cameras; BRAVO -1, 2, & 3 Sides Vestibule Cameras; BRAVO-Buildings Cen -308 & Cell Camera; and any Hand-Held "Sony" Camera footage showing Removal from five-point Restraints by W.R.S.P. and/or R.J.S.P. on 9/14/15, of G.W.H. #1133744, that was Received and Copied by R.J.S.P. & Grievance Department on 10/20/15, (See: attached # 2), well within the 90 day time frame Rapid-Eye Security Camera footage is Stored.

3. Affiant declares, Defendants Should have anticipated future litigation because as early as August 19th 2015, ~~Special~~ Special Investigative Unit was notified for possible Criminal charges concerning the 9/14/15, incident

4. Affiant declares, the Video Footage provided for review on May 22nd 2018, of ALPHA-100, and DLT Rapid-Eye Camera of the 9/14/15, incident was markedly different from the Video footage provided with the S.I.U. Investigative Report (Case #150423RED) and the Prince County Circuit Courts Case # E16-55-30, and E16-55-31, for Two(2) Counts of Violation of Virginia Code § 18.2-57(e), against Plaintiff. Reviewed by him on March 27th 2016, to prepare for a Criminal Trial; by the Video footage reviewed by Plaintiff on 5/22/18, Clearly DID NOT SHOW ANY footage of myself or either Officer ~~were~~ going to the ground, as a matter of fact, this footage showed on 5/22/18, next frame showed me laying face-down (unresistant) with several Officers (Sgt. T. Large & Lt. J. Lyall) around me as other Responding Officers ~~arrived~~ (entered the pool) leading me to believe this footage was ALTERED/EDITED and Since None of this Video footage Contained any form of Time Sequence "the footage showed was not a Continuous or Connected..."

(CONTINUED ON NEXT PAGE)

MOTION FOR HOLDING OF SPOILATION SANCTIONS BY DEFENDANTS FOR ASSOCIATED RELIEF
Continuation of: II. AFFIDAVIT IN SUPPORT OF MOTION, from paragraph #8, page: four

(CONTINUATION OF: II. AFFIDAVIT IN SUPPORT OF MOTION, paragraph #8, from page: four)

Series of events as alleged by either party or the video footage on record with the WISE COUNTY CIRCUIT CLERK for Case # F16-55-00, and F16-55-01.

6. Affiant declares, Defendants' Response to Plaintiffs' First Request for Production of Documents (dated: May 16th 2018) at paragraph #2 and #6, and their Response to Plaintiffs' Motion To Compel (dated: November 7th 2018) at paragraphs #3(a), (b) & (c), Clearly Shows Defendants DID NOT SAVE any of the Rapid-Eye Video footage of:

- ALPHA-Buildings Front Recreational yard at approx. 4:00 - 5:00 pm;
- BRAVO-Buildings Recreational yard at approx. 4:00 - 5:00 pm;
- BRAVO-Buildings 1,2, & 3 sides Vestibule at approx. 4:00 - 5:00 pm;
- BRAVO-Buildings Cell 308's Cell Camera at approx 4:00 - 5:00 pm;
- Any Hand-held "Sally" Camera footage showing REMOVAL from five-point Restraints by W.R.S.P. and/or R.O.S.P. on 8/14/15, of G.Wall #1133749 and;
- Pages "2" and "4", of plaintiffs written statement on 8/20/15.

nor was any of this provided for inspection by Plaintiff in accordance with the October 24th 2018, Court ORDER on record as ECF. no. 60.

7. Affiant declares, Plaintiff has been irreparably prejudiced, that it has substantially DENIED him the ability to adequately defend against the Counter-Claims or prosecute his Case adequately by being unable to Clearly Show Plaintiff DID NOT cause the injury to Officer J. Hicks' Right eye by punching him as alleged nor did Plaintiff at any time swing a punch at either Officer, Plaintiff was NOT resistant while en route to BRAVO-Building to interrupt the continued use of force or being strapped down in five-point Restraints, and that Plaintiff was Continuously Beat and Rammed into poles, walls, and door frames Head-first by escorting officers while en route to BRAVO-Building and while in BRAVO-1,2, & 3 Sides Vestibule.

8. Affiant declares, Defendants should have reasonably known that the evidence in the Video footage Request would be relevant to any (Criminal or Civil) anticipated litigation.

dated: 12/19/18

Gerry Wall #1133749
(CONTINUED ON NEXT PAGE)

MOTION FOR HOLDING OF SOLITATION SANCTIONS BY DEFENDANTS FOR ASSOCIATED RELIEF

Continuation of: II. AFFIDAVIT IN SUPPORT OF MOTION, from page five:

(CONTINUATION OF: II. AFFIDAVIT IN SUPPORT OF MOTION, from page five)

STATE OF VIRGINIA

County of: Wise to wit:

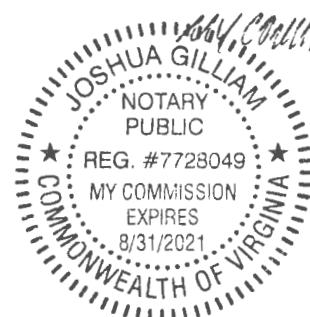
Subscribed and sworn to before me, a NOTARY PUBLIC, on this 20 day of

December 2018.

John Kline

NOTARY PUBLIC

8/31/2021



* The above named Notary is Not a party to this action: Yang Wall #1133749

III. ASSOCIATED RELIEF REQUEST

WHEREFORE, Plaintiff humbly request this Court to GRANT the Sanctions against the Defendants in the form of:

- (i) Forfeiture of the Defendants Clarius mobile Defenses;
- (ii) Issuing a series of fact-Specific adverse jury instruction(s) at trial that Video footage had been captured depicting the incident that occurred on 8/14/15, at approx. 4:30 - 5:00 pm, and that Defendants DESTROYED or ALTERED the Video after it was reviewed despite of having a legal duty NOT to and the jury is free to draw inferences from that fact about the contents of the Video, but not required to;
- (iii) Prohibiting any evidence or contention at trial that the contents of the Video corroborated the Defendants' version of events;
- (iv) Prohibiting any evidence or argument that Officer J Hicks and/or E. Rossell were performing their duties during the incident on August 15th 2015, in accordance with their training or VOOC's policy and procedure. Concerning Giving Directions to an Offender on the use of force; and;
- (v) Judgment in the Plaintiff's favor, which ever the Court deems appropriate.

Dated: 12/14/18

Yang Wall #1133749
Respectfully Submitted

CERTIFICATE OF SERVICE

I hereby certify that on this 21 st day of DECEMBER 2018, I mailed a copy of the foregoing MOTION FOR HOLDING OF SOLITATION SANCTIONS BY DEFENDANTS FOR ASSOCIATED RELIEF WITH AFFIDAVIT IN SUPPORT OF MOTION, to Respondent, UNITED STATES DISTRICT COURT CLERK; 210 Faxon River Road, SW, Suite 570, ROANOKE, VIRGINIA 24011-2200 by First Class mail.

(G) (Page 34 of 6)

Yang Wall #1133749
Respectfully Submitted